

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
ROCK HILL DIVISION

Levern Henry, #229210,	)	C/A No. 0:05-2686-JFA-BM
	)	
Petitioner,	)	
v.	)	<b>ORDER</b>
	)	
Lee County Sheriff's Department,	)	
	)	
Respondent.	)	
_____	)	

This action is before the court pursuant to 28 U.S.C. § 2254. The *pro se* petitioner, Levern Henry, is a former state prisoner, seeking relief under 28 U.S.C. § 2254. For the reasons discussed herein, the court denies the petition without prejudice and without issuance and service of process on the respondents.

In accordance with 28 U.S.C. § 636(b)(1)(B) and Local Rule 73.02, this matter is before the court for review of the Magistrate Judge's Report and Recommendation. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility for making a final determination remains with the district court. *Mathews v. Weber*, 423 U.S. 261 (1976). The district court is charged with making a *de novo* determination of those portions of the report and recommendation to which specific objection is made, and it may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

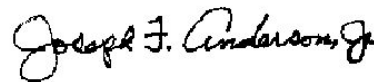
Based on his review of the record, the Magistrate Judge has recommended that the petition be dismissed without prejudice because the petitioner is currently not confined and he has completed his probationary term. In his petition, Mr. Henry seeks expungement of his conviction, commencement of a criminal prosecution against the respondent, and removal of his requirement to register under the South Carolina Sex Offender Registry Act.

As the Magistrate suggests, because Mr. Henry is no longer “in custody,” he may not pursue a habeas challenge to his underlying conviction. Moreover, a § 2254 petition is not the proper vehicle to seek monetary damages or other relief for denial of constitutional rights and protections in violation of 42 U.S.C. § 1983.

The petitioner was advised of his right to file objections to the Report and Recommendation. As of the date of this order, the petitioner has not filed objections within the time limits prescribed by the Local Rules.

The court has reviewed the record and applicable law and agrees with the Magistrate Judge’s recommended disposition. Accordingly, the Report and Recommendation of the Magistrate Judge is adopted and incorporated herein by reference, and this action is dismissed without prejudice and without issuance and service of process.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "Joseph F. Anderson, Jr." in a cursive script.

Joseph F. Anderson, Jr.  
United States District Judge

November 21, 2005  
Columbia, South Carolina